

REMARKS

Claims 1-19 are pending in the present application. In the office action, the Examiner objected to claim 18 because the word "downconverting" was misspelled. Claim 18 has been amended solely to correct the misspelling. The claims have in no way been narrowed by virtue of this amendment and so this amendment should not be interpreted as narrowing the claimed invention for purposes of any determination under the doctrine of equivalents. Applicant respectfully request that the Examiner's objection to claim 18 be withdrawn.

In the Office Action, claims 1, 3-4, 6-9, 11-12, 14-15, and 17-19 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Ashby, et al (U.S. Patent No. 5,305,384). Claims 2, 5, 10, 13, and 16 were rejected under 35 U.S.C. 103(a) as being obvious over Ashby in view of Fleming, et al (U.S. Patent No. 6,549,568). The Examiner's rejections are respectfully traversed.

Independent claims 1, 9, 15, and 19 set forth, among other things, receiving unencrypted control codes and encrypted user data over a communications channel and transmitting an upstream data signal over the communications channel based on the control codes. In particular, claims 9, 15, and 19 set forth transmit the upstream data signal over the communications channel based transmission assignments defined by the control codes.

In contrast, Ashby describes a modem that receives encrypted critical control information and a digitally encrypted NRZ signal. The encrypted critical control information is then decrypted and error-corrected by replacing any detected errors with correct information. The unencrypted corrected critical control information and the demodulated digitally encrypted NRZ signal are then compressed by a complementary transmit modem and input into a repeater modulator for retransmission to remote receivers. However, Ashby fails to teach or suggest

transmitting an upstream data signal over a communications channel based on one or more control codes, as set forth in independent claims 1, 9, 15, and 19, because the corrected critical control information described in Ashby is simply re-compressed and transmitted. Ashby also fails to teach or suggest transmitting the upstream data signal over the communications channel based on transmission assignments defined by the control codes, as set forth in independent claims 9, 15, and 19. For at least the aforementioned reasons, Ashby does not describe or suggest all the limitations set forth in claims 1, 9, 15, and 19 in the same relationship to one another as set forth in the claims. Thus, Applicants respectfully submit that claims 1, 9, 15, 19, and all claims depending therefrom are not anticipated by Ashby. Applicants request that the Examiner's rejections of claims 1, 3-4, 6-9, 11-12, 14-15, and 17-19 under 35 U.S.C. 102(b) be withdrawn.

Moreover, it is respectfully submitted that the pending claims are not obvious in view of Ashby and Fleming, either alone or in combination. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). As discussed above, Ashby fails to teach or suggest transmitting an upstream data signal over a communications channel based on one or more control codes and, in particular, transmitting the upstream data signal over the communications channel based transmission assignments defined by the control codes. The Examiner relies upon Fleming to teach control codes that include at least one of a power level assignment, a frequency assignment, and a time slot assignment. However, Fleming fails to teach or suggest transmitting an upstream data signal over a communications channel based on one or more control codes and, in particular, transmitting the upstream data signal over the communications channel based transmission assignments defined

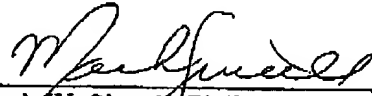
by the control codes. Thus, Fleming fails to remedy the fundamental deficiencies of the primary reference.

For at least the aforementioned reasons, Applicants respectfully submit that the present invention is not obvious over Ashby in view of Fleming. Applicants request that the Examiner's rejections of claims 2, 5, 10, 13, and 16 under 35 U.S.C. 103(a) be withdrawn.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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